

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6556 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SURAT MUNICIPAL CORPORATION & ANR.

Versus

MAHADEV CHHATRAM RAJPUT & ORS.

Appearance:

MR GN DESAI for Petitioner

None present for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 27/09/96

ORAL JUDGEMNT

Heard learned counsel for the petitioners.
Challenge is made by the petitioner to the order of Extra Assistant Judge, Surat, in Misc. Civil Appeal No.50 of 1983 dated 3.8.84.

2. The respondents have filed a suit for declaration and permanent injunction being Regular Civil Suit No.940 of 1982, in the Court of 2nd Joint Civil Judge, (S.D.),

Surat, against the present petitioners. In the suit, the respondents filed an application ex.5 and prayed therein for grant of temporary injunction restraining the defendants therein, the petitioners herein, from executing the notice to demolish properties till decision of the suit. The Trial Court has declined to grant temporary injunction and the respondents herein have preferred Misc. Civil Application No.50 of 1983 in the Court of Extra Assistant Judge, Surat. This appeal was filed by the respondents before the appellate authority under Order 43, Rule 1 of Civil Procedure Code. The said appeal was allowed and temporary injunction as prayed for by the plaintiffs, the respondents herein, till disposal of the suit in terms of para-41 of the Plaint, was granted.

3. This Special Civil Application has arisen out of the civil suit filed by the respondents in which the trial Court has declined to grant temporary injunction to the plaintiffs but the appellate Court, in Civil Misc. Application, filed under Order 43, Rule 1 of C.P.C., has granted injunction. The order which has been passed by the appellate Court in an appeal filed by the respondents, under Order 43, Rule 1 of C.P.C., cannot be challenged before this Court as the petitioners have remedy u/s.115 of C.P.C. The Supreme Court in the case of Swetambar S.J.S. v. R.J.I. College, reported in AIR 1996 SC 1209, has taken a view that such an order can only be challenged by way of remedy provided in the C.P.C., 1908 and not by way of writ petition.

4. In the result, this Special Civil Application fails only on the ground of non maintainability of the same. Rule discharged. Ad-interim relief, if any, granted by this Court stands vacated. No order as to costs.

.....

(sunil)